

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LORENZO KNIGHT,

Defendant-Appellant.

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UNPUBLISHED

January 21, 2014

No. 310804

Wayne Circuit Court

LC No. 12-001090-FC

Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of one count of carjacking, MCL 750.529a, two counts of armed robbery, MCL 750.529, one count of receiving and concealing a stolen motor vehicle, MCL 750.535(7), and one count of fourth-degree fleeing and eluding a police officer, MCL 257.602a(2). He was originally sentenced to 135 to 240 months' imprisonment for the carjacking, armed robbery, and receiving and concealing a stolen motor vehicle convictions, and received a suspended sentence for the fourth-degree fleeing and eluding a police officer conviction. Defendant moved this Court for a remand on February 12, 2013, arguing that the sentencing guidelines at trial were incorrect due to a scoring error. This Court granted the motion on March 21, 2013, so that defendant could move for resentencing before the trial court.<sup>1</sup> The trial court resentenced defendant to 126 to 240 months' imprisonment for the carjacking, armed robbery, and receiving and concealing a stolen motor vehicle convictions. He appeals as of right. We affirm.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

This case arises from a series of events, including a carjacking and high speed flight from police, which occurred on December 19, 2011 and December 22, 2011, respectively, in Detroit, Michigan. On December 19, 2011, a man approached the two victims, Curtis Taylor and Dedrick Austin, while they were in a blue Dodge car belonging to Taylor's grandmother. The man, identified by both victims as defendant, removed a black handgun from underneath his

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<sup>1</sup> *People v Knight*, unpublished order of the Court of Appeals, entered March 21 2013 (Docket No. 310804).

shirt. Defendant and another man took cellular phones and money from the victims and drove away in the blue Dodge.

Three days later, Detroit police officers on patrol in a marked squad car observed the Dodge and noticed that the driver, defendant, was not wearing a seatbelt. An officer entered the license plate number of the blue Dodge into his onboard computer and discovered the car had been carjacked. The officers activated the squad car's siren and lights and attempted to pull over the Dodge. The Dodge instead accelerated, beginning a high-speed chase. The vehicle eventually stopped, and defendant fled on foot. Two other males remained in the vehicle. Defendant was ultimately located hiding under a bus in an alley and was arrested.

Defendant claimed that he did not know the two other men in the car, that they had given him a ride to the store to purchase soda, and that one of the men had asked him to drive the Dodge because he was ill. He stated that when the police car attempted to pull the Dodge over, one of the men told him the car was stolen. Defendant claimed that he fled from police out of fear, because he was on parole. He denied any involvement in the December 19 carjacking.

Taylor identified defendant in a photo lineup, and again in a live lineup. Austin was not able to identify defendant from two photo lineups, but did identify defendant during a live lineup. Both victims identified defendant as the man holding the gun during the carjacking and armed robberies. Both victims also identified defendant at trial.

## II. JAIL GARB

Defendant first contends that he was denied his constitutional right to due process because he was forced to wear a jail uniform during his trial. Further, defendant argues that witnesses making in-court identifications of defendant during the trial were unduly prejudiced by the jail uniform. We disagree.

Because defendant failed to preserve this issue for appellate review, it will be reviewed for plain error affecting substantial rights. *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). Reversal is only warranted if defendant was actually innocent and the plain error caused defendant to be convicted or "if the error 'seriously affected the fairness, integrity, or public reputation of judicial proceedings,'" regardless of defendant's innocence. *Id.* at 454, quoting *People v Ackerman*, 257 Mich App 434, 449; 669 NW2d 818 (2003).

"[A] criminal defendant generally has the right to appear before the court with the appearance, dignity, and self-respect of a free and innocent man." *People v Payne*, 285 Mich App 181, 187; 774 NW2d 714 (2009), quoting *People v Shaw*, 381 Mich 467, 474; 164 NW2d 7 (1969). Accordingly, "the general rule is that when a defendant makes a timely request that he be allowed to wear civilian clothes at trial such a request must be granted." *People v Daniels*, 163 Mich App 703, 710; 415 NW2d 282 (1987); see also *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993). However, this rule has been applied in Michigan only to cases involving jury trials. See *Shaw*, 381 Mich at 467; *Daniels*, 163 Mich App at 710; *People v Turner*, 144 Mich App 107; 373 NW2d 255 (1985); *People v Lee*, 133 Mich App 299; 349 NW2d 164 (1984). "The underlying rationale in all of these cases was the defendant's presumption of innocence would be unduly prejudiced before the jury if defendant was forced to

be tried in jail garb.” *Daniels*, 163 Mich App at 710. However, in a case tried before a judge, no such prejudicial effect can be shown. *Id* (“No such prejudicial effect could be shown in this case, tried before a judge.”).

Defendant points to a decision of the Court of Appeals of New York, *People v Best*, 19 NY3d 739; 979 NE2d 1187 (2012), to support the assertion that judges presiding over bench trials can also be unduly prejudiced by a defendant standing trial in restraints. For several reasons, *Best* is inapplicable to the facts here. First, *Best* involved a defendant being required to wear shackles, *id.* at 742-743; in contrast, defendant was not restrained at trial and only challenges the requirement that he wore a jail uniform during the trial. Shackles are likely to create a special risk of undue prejudice against a defendant because they suggest the defendant is a continuing threat to the safety of people in the immediate vicinity. A jail uniform merely suggests that defendant was being held in custody during the trial, a fact of which the trial judge was already aware. Second, the defendant in *Best* objected to the continued shackling during the trial, *id.*, while defendant here did not object at any point to the jail uniform. Finally, *Best* is not controlling authority in Michigan, and the Michigan authority on this issue, most recently *Daniels*, expressly holds that a defendant does not suffer prejudice by wearing jail garb during a bench trial. *Daniels*, 163 Mich App at 710. Accordingly, we hold that no plain error occurred when defendant wore the jail uniform during his trial.

Defendant also argues that the in-court identification of defendant by Taylor and Austin was improper because the witnesses were unduly prejudiced by defendant’s jail uniform. However, both Taylor and Austin had already identified defendant in photo or live lineups prior to trial. As noted in *Daniels*, where the witnesses also had already identified the defendant prior to trial, there is no undue prejudice against a defendant when the witnesses identify him again in court. *Daniels*, 163 Mich App at 710-711. Accordingly, it was not error for Taylor and Austin to identify defendant during the trial while he was wearing a jail uniform.

Even assuming defendant could demonstrate error, such error did not affect the outcome of the proceedings. Overwhelming evidence existed on the record to prove beyond a reasonable doubt that defendant committed the charged offenses. Taylor and Austin identified defendant before trial as the person who wielded the handgun during the carjacking and robberies. Three days after the carjacking and robbery, defendant led police on a high-speed chase around Detroit in the stolen Dodge, and was later arrested after fleeing on foot from the vehicle. Defendant’s girlfriend provided an alibi for defendant’s whereabouts on December 19, 2011, and defendant offered an explanation for how he came to be driving the stolen vehicle. The trial court, sitting as the fact finder in a bench trial, obviously did not find defendant’s version of events credible. We defer to the special opportunity of the trial court to judge the credibility of witnesses before it in a bench trial. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). Accordingly, because any error that occurred at trial was not outcome determinative, defendant’s due process right to a fair trial was not violated.

### III. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that he was denied the effective assistance of counsel at trial because his attorney failed to object to the jail uniform, and that he failed to make a pretrial motion to suppress the identifications made by Taylor and Austin. We disagree.

“Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The lower court’s findings of fact are reviewed for clear error. *Id.* Questions of constitutional law are reviewed de novo. *Id.* Review of an unpreserved claim of ineffective assistance of counsel is limited to the facts on the existing record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

Criminal defendants have a right under the United States and Michigan Constitutions to the effective assistance of counsel at trial. US Const, Am VI; Const 1963, art 1, § 20; *People v Vaughn*, 491 Mich 642, 669; 821 NW2d 288 (2012). To establish ineffective assistance of counsel, a criminal defendant must show that (1) under prevailing professional norms, counsel’s performance fell below an objective standard of reasonableness; (2) but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different; and (3) the proceedings were fundamentally unfair or unreliable. *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). Michigan courts employ a presumption that counsel’s performance is effective, and there is a heavy burden upon the defendant to prove otherwise. *Vaughn*, 491 Mich at 670. This Court will not substitute its judgment for that of defense counsel on matters of strategy, nor will it employ the benefit of hindsight to assess the competence of counsel. *Payne*, 285 Mich App at 190. Specifically, counsel’s decision to not make objections can be sound trial strategy. *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008).

Defendant’s arguments that counsel was ineffective are without merit. First, counsel’s performance did not fall below an objective standard of reasonableness under prevailing professional norms. As noted above, a defendant does not enjoy a constitutional right to wear civilian clothing during a bench trial. Although defendant correctly points out that Taylor and Austin identified defendant as wearing a jail uniform during the trial, the witnesses were specifically asked to identify what clothing defendant was wearing at the time of the identification. There is no basis in Michigan law for defendant’s assertion that he was entitled to wear civilian clothing during his bench trial, or that the jail uniform unduly prejudiced defendant at trial; accordingly, counsel’s failure to object to that clothing did not fall below an objective standard of reasonableness. See *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003) (“[C]ounsel does not render ineffective assistance by failing to raise futile objections.”).

Counsel’s failure to move to suppress the pre-trial identifications of defendant by Taylor and Austin also did not fall below an objective standard of reasonableness. Defendant argues for the first time on appeal that the photo lineups shown to Taylor and Austin by police were impermissibly suggestive because the other photos in the lineup showed men that were shorter and darker skinned than defendant. However, this assertion has no support in the record, nor is there any indication in the record that defendant’s trial counsel was aware of the facts now asserted. Defendant has thus failed to establish a factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Defendant is correct to point out that Austin was unable to identify defendant in a photo lineup, and that when Taylor identified defendant in a photo lineup, he merely said that the photo of defendant looked like the perpetrator, rather than stating affirmatively that the photo was that of the perpetrator. However, neither of these facts casts any doubt on Taylor’s and Austin’s identifications of defendant in live lineups, or their identifications of defendant at trial. More

specifically, nothing that occurred during the lineups, insofar as can be determined from the record, was a clear indication to defendant's counsel that there was a basis for a motion to suppress. Rather, the two victims of the carjacking and robberies, both of whom observed defendant during the crimes, identified defendant multiple times before and during the trial. Because it is unclear on what grounds defendant's counsel could have moved to suppress the identifications, it did not fall below an objective standard of reasonableness for counsel to fail to make a motion to suppress.

Even if counsel's failure to object to the jail clothing and to move to suppress the pre-trial identifications fell below an objective standard of reasonableness, defendant has not demonstrated that he was prejudiced. Overwhelming evidence existed on the record to prove beyond a reasonable doubt that defendant committed the charged offenses. Taylor and Austin identified defendant before trial as the person who wielded the handgun during the carjacking and robberies. Three days after the carjacking and robbery, defendant led police on a high-speed chase around Detroit in the stolen Dodge, and was later arrested after fleeing on foot from the vehicle. Even if defendant had worn civilian clothes during the trial, and the pre-trial identifications by Taylor and Austin were suppressed, the evidence still would have shown that a man matching defendant's description had carjacked and robbed Taylor and Austin, and that defendant was found driving the stolen vehicle three days later. Accordingly, considering the heavy burden placed on defendant to prove ineffective assistance of counsel, defendant has failed to demonstrate that counsel's performance was ineffective, or that it was prejudicial.

#### IV. SENTENCING

Finally, defendant argues that he is entitled to resentencing because OV 1 was incorrectly scored at the initial sentencing. This issue is moot.

"A case is moot when it presents nothing but abstract questions of law which do not rest upon existing facts or rights." *People v Richmond*, 486 Mich 29, 35; 782 NW2d 187 (2010). "A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, . . . or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy." *Id.*, 486 Mich at 35. Defendant's brief on appeal was filed on December 12, 2013, the same day that defendant filed a motion to remand with this Court on the same scoring issue. As noted, the motion to remand was granted on March 21, 2013. The lower court conducted a resentencing hearing, at which the prosecution agreed, as argued by defendant, that OV 1 should have been scored at five points. The lower court resentenced defendant based on the corrected guidelines range with an OV 1 score of five points. Accordingly, because the requested relief has already been granted, the issue is moot.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Christopher M. Murray  
/s/ Mark T. Boonstra